

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHANIEL ISH,

Petitioner,

v.

JEFFREY A UTTECHT,

Respondent.

CASE NO. C12-6084 RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR:

FEBRUARY 8, 2013

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge, J. Richard Creatura. The authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction. The petition is filed pursuant to 28 U.S.C. § 2254.

Petitioner asks the Court to grant him in forma pauperis status (ECF No. 1). Petitioner has seventy-seven dollars and fourteen cents on account and spendable in his prison trust account (ECF No. 1). Petitioner can afford the five dollar filing fee for a habeas corpus action. The Court recommends that petitioner's motion to proceed in forma pauperis be denied and petitioner be

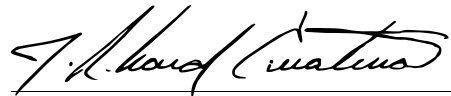
1 given thirty days to pay the five dollar filing fee. If the fee is not paid the action should be
2 dismissed by Court order.

3 The right to proceed in forma pauperis is not absolute and denial of in forma pauperis
4 status is reviewed for abuse of discretion. *Denardo v. Collum*, 48 F.3d 1227 (9th Cir. 1995).
5 Further, the Ninth Circuit addressed the denial of in forma pauperis status over forty years ago
6 and held that proceeding in forma pauperis is a matter within the sound discretion of the trial
7 court in civil actions. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963). Here, petitioner has funds
8 to pay the full fee. The motion to proceed in forma pauperis should be denied.

9 Petitioner should be given thirty days to pay the full five dollar filing fee. Failure to pay
10 that fee should result in immediate dismissal of this petition.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
12 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
13 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
14 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
15 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
16 February 8, 2013, as noted in the caption.

17 Dated this 7th day of January, 2013.

18
19 

20 J. Richard Creatura
21 United States Magistrate Judge
22
23
24